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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,305	11/13/2000	Hieu T. Nguyen	NUY 301	8618
7590	09/22/2004		EXAMINER	
Kolisch Hartwell Dickinson McCormack & Heuser 520 S W Yamhill Street Suite 200 Portland, OR 97204			DONNELLY, JEROME W	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/712,305	NGUYEN, HIEU T.
	Examiner	Art Unit
	Jerome W Donnelly	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 5-7-04

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

42-60

4) Claim(s) is/are pending in the application.

4a) Of the above claim(s) is/are withdrawn from consideration.

5) Claim(s) is/are allowed.

6) Claim(s) is/are rejected.

7) Claim(s) is/are objected to.

8) Claim(s) 42-60 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

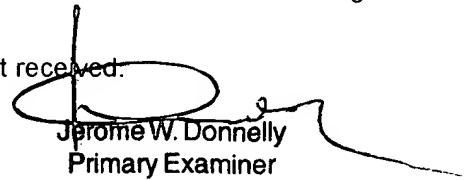
Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. .
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



Jerome W. Donnelly
Primary Examiner

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date

5) Notice of Informal Patent Application (PTO-152)

6) Other:

Applicant has included claim 48 as an invention which has been elected in Group I of a previous election. The examiner however, notes that claim 48 was a non-elected invention. Please re-elect between the apparatus claims and claim 48 which is a method claim.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 4-47 and 49-51 and 53-60, drawn to apparatus, classified in class 482, subclass 70.
- II. Claim 48, drawn to method, classified in class 482, subclass 148.

The inventions are distinct, each from the other because:

Inventions Group I and Group II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case this method is achieved when pedaling any elliptical pedaling machine having pedals.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (703) 308-2668.